



Montana Fish, Wildlife & Parks

4600 Giant Springs Road
Great Falls, MT 59405

September 26, 2003

To Whom It May Concern:

On December 6, 2002, a Petition to remove private lands from within the boundary of the Teton-Spring Creek Bird Preserve, Teton County, Montana was received from landowners within the Preserve. Those landowners represent the Saylor Ranch and the Van Setten Wilt Ranch. A subsequent letter requesting joining the Petition was received from the Bryan Ranch. The Montana Fish Wildlife and Parks (MFWP) Department proposes to consider these Petitions and has prepared an Environmental Assessment (EA) for that purpose. This EA is prepared in conjunction with a simultaneous Rule making process being conducted by MFWP to address the Preserve boundaries.

Attached to this letter is your copy of the Draft Environmental Assessment evaluating this effort.

Comments will be accepted until 5:00 PM Monday, 20 October 2003 and can be mailed to:

Teton-Spring Creek Bird Preserve EA
Montana Fish Wildlife and Parks
4600 Giant Springs Road
Great Falls, MT 59405

Or e-mailed to: fwprg42@state.mt.us

Thank you for your interest and participation in this effort.

Sincerely,

Mike Aderhold
Regional Supervisor,
MFWP Region 4/Great Falls

*Teton
Mise.*



Montana Fish, Wildlife & Parks

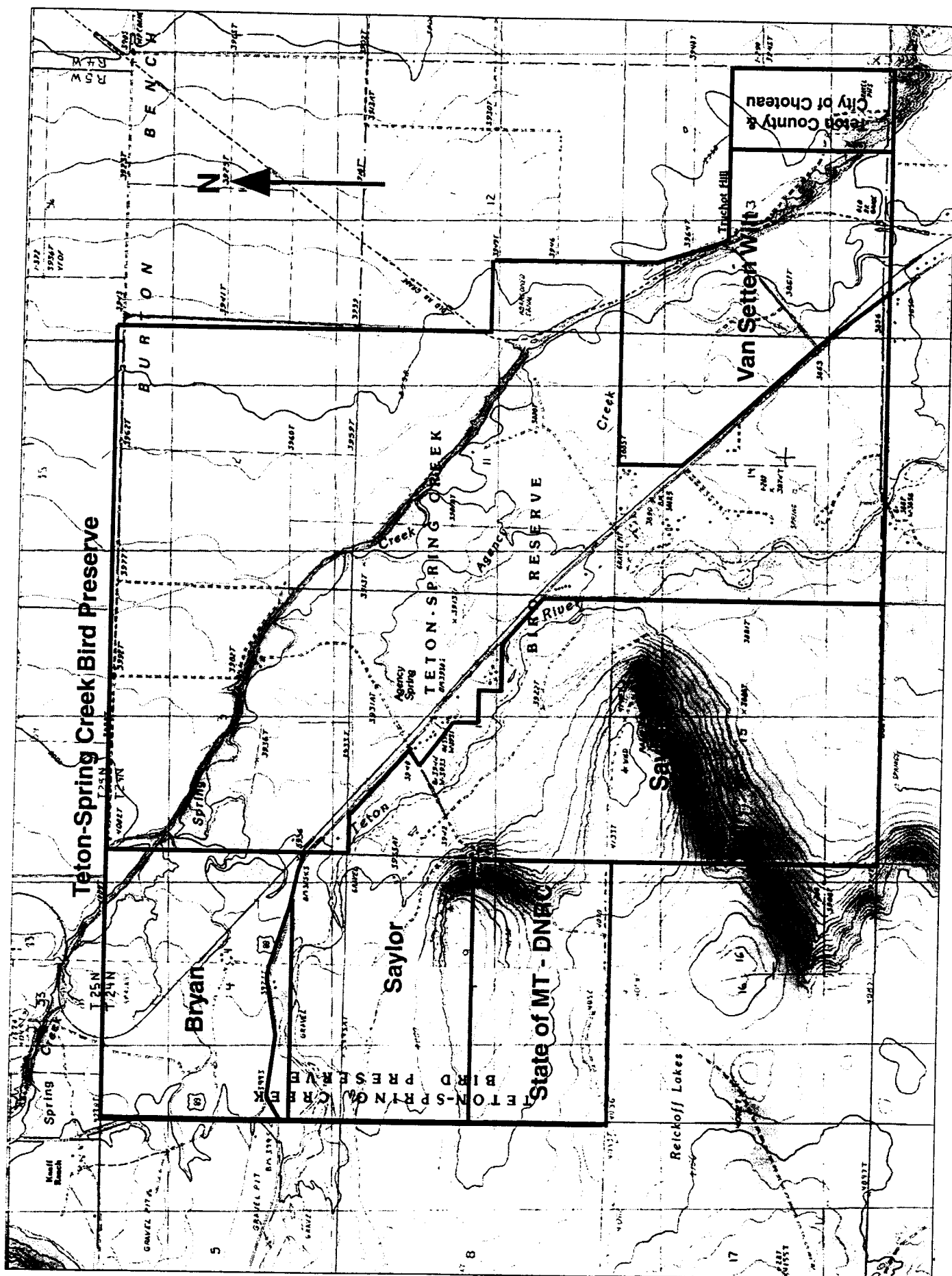
TETON-SPRING CREEK BIRD PRESERVE (TSCBP) BOUNDARY ADJUSTMENT ENVIRONMENTAL ANALYSIS

PART I. PROPOSED ACTION DESCRIPTION

1. **Type of Proposed State Action:** Modification of TSCBP Boundaries
2. **Agency Authority for the Proposed Action:** Teton-Spring Creek Bird Preserve established, 87-5-405; [Preserve] 'Posting of notice and additional provisions', 87-5-402(3); FWP Commission Season Setting and Rulemaking, 87-1-301(1(b));
3. **Name of Project** ENVIRONMENTAL ASSESSMENT FOR BOUNDARY ADJUSTMENT OF THE TETON-SPRING CREEK BIRD PRESERVE
4. **Name, Address and Phone Number of Project Sponsor (if other than the agency)**
By Petition, the following land owners within the existing TSCBP request their properties within the Preserve be withdrawn from it:
Pat Saylor, P.O. Box 1235, Choteau, MT 59422
Bernice Van Setten Wilt, P.O. Box 66, Choteau, MT 59422
5. **If Applicable:**

Estimated Construction/Commencement Date N/A

Estimated Completion Date N/A
Current Status of Project Design (% complete) N/A
6. **Location Affected by Proposed Action (county, range and township):** The Teton-Spring Creek Bird Preserve, Teton County; T24N, R5W legally described as:
All of Sections 2, 3, 4, 9, 10, 11, 14, and 15, W ½ of SW ¼ of s12 west of the Truchot Road and all of s13 except the northern ¼ of s13 east of Truchot Road.
7. **Project Size: Estimate the number of acres that would be directly affected: (see map)**
Total existing Preserve size = approximately 5720 acres;
Lands proposed to be removed from Preserve = 2936 acres. (51%)
8. **Map/site plan:**



9. Narrative Summary of the Proposed Action including the Benefits and Purpose of the Proposed Action.

The 5,720-acre Teton-Spring Creek Bird Preserve is comprised of 92 percent private and 8 percent public (State of Montana-DNRC and Teton County/City of Choteau) land and lies in Teton County, Montana. Its southern boundary lies approximately 1 mile north of Choteau, MT. U.S. Highway 89 runs through it and a sparse network of county and private roads exists to service private homes and agricultural operations. Major habitat types include Cottonwood Forest, supported by the presence of Spring Creek and the Teton River and an Upland Prairie type typified by short and mid grassland species. Agricultural production is the dominant land use, including hay lands, small grain production and livestock grazing. Portions of the Preserve include residential development, most notably those in association with the roaded corridors.

This Assessment is prepared in order to consider the impacts of the petitioned changes in the Preserve boundary. In addition to the Petitioned changes, other landowners (listed below) have submitted their properties for consideration in the matter of boundary adjustment and withdrawal from the Preserve. The boundary of the Teton-Spring Creek Bird Preserve, established by 87-5-405, MCA, would be adjusted by withdrawal of: a) the Pat Saylor Ranch property as the N $\frac{1}{2}$ of s9; S $\frac{1}{2}$ of S $\frac{1}{2}$ of s4; all of s15; S $\frac{1}{2}$ and NW $\frac{1}{4}$ s10, (excluding certain private lots); all in Township 24N and Range 5W and west of U.S. Highway 89; b) the Van Setten Wilt Ranch properties in the NE $\frac{1}{4}$ of s14; SW $\frac{1}{4}$, W $\frac{1}{2}$ and SE $\frac{1}{4}$ of the NW $\frac{1}{4}$; W $\frac{1}{2}$ of the SE $\frac{1}{4}$; SW $\frac{1}{4}$ of NE $\frac{1}{4}$, all of s13 (excluding certain private lots), all in T24N R5W and east of U.S. Highway 89; c) the Bryan Ranch property as the N $\frac{1}{2}$ of s4 and the N $\frac{1}{2}$ of the S $\frac{1}{2}$ of s4 (excluding certain private lots), all in T24N R5W and north and east of U.S. Highway 89; d) State of Montana-DNRC land as the S $\frac{1}{2}$ of s9; in T24N R5W and; e) land owned jointly by Teton County and the City of Choteau as the E $\frac{1}{2}$ of SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ s13, all in T24N R5W. See the accompanying map for details.

As stated in their Petition, these landowners seek remedy by removing their properties from the existing Preserve. Their purpose is stated out of concern for "...financial loss, property damage and danger created by the over-population of deer on the Preserve". The request for modification also presents the Department with an opportunity to address long-standing management problems that the Preserve status presented. Over the years agricultural landowners have complained on numerous occasions about deer damage to growing crops and stacked hay. Preserve regulations prohibit activities that the department routinely uses to abate game damage.

Section 87-5-405, Montana Code Annotated (MCA), set aside a ten-square mile area of the Teton River/Spring Creek drainage as a state bird Preserve in 1923. The object was to protect and enhance upland bird populations, particularly ringed-necked pheasants, and to provide a source of birds for an expansion of the local pheasant population. Pheasants have become well established in suitable habitat in north-central Montana and there is no longer a biological need for this Preserve.

The statutes governing game preserves are covered in 87-5-401 through 87-5-406, MCA. The general game preserve provisions found in 87-5-401 state, in part, that: "...no person may, within the limits of a game preserve...hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs...." Within the Preserve, there has been a long history of high deer numbers (mostly white-tailed deer), subsequent game damage, and the desire to carry and/or discharge firearms, including for deer reduction purposes. In addition, furbearer trapping for damage control and/or for commercial-recreational purposes has been desired, but not permissible.

Since its creation in 1923, land use in the Preserve has gradually changed from large-scale agricultural

production to a large-scale agricultural/residential mix. Today, roaded corridors (principally U.S. Highway 89) support single-family residences among disjointed agricultural fields. All of these areas have experienced varying degrees of depredation from deer. Additionally, many of the residents own firearms, the carrying of which is prohibited within the Preserve boundaries by preserve regulations.

Montana reached its peak number of 46 bird and game preserves in 1936. However, by 1972 the number of preserves in Montana had declined to 16. In 1999 there were only 7 preserves still existing in the state. This decline was due in large part to new views and ideas concerning game management. Experience with bird and game preserves and increased scientific knowledge of wildlife, led to the reappraisal of the older concepts and values of these preserves. This experience and expanded scientific knowledge of wildlife showed that game preserves, "...served poorly to stock adjacent areas (their original purpose) and in many cases were unnecessarily removing areas from public use." (From the minutes of the State Fish and Game Commission in Helena, MT May 21, 1945).

In 1979, the Fish Wildlife and Parks Commission (then, Fish and Game Commission) proposed a Rule to abandon the Teton-Spring Creek Bird Preserve. Following a public meeting in Augusta, the Commission decided not to pursue or further consider the abandonment of the Preserve in part because of concerns with hunters in the area. However, to address game damage concerns in 1981, the Legislature amended 87-5-405, MCA, to allow a special archery season on the Preserve.

In 1986, the Department proposed an Administrative Rule to abandon the Teton-Spring Creek Bird Preserve for the reduction of deer numbers. After a public hearing in Choteau, the Department decided not to adopt the Rule based on the recommendation of the Commission and the generally adverse public testimony, particularly from landowners within the Teton-Spring Creek Bird Preserve. The lack of any alternative to existing hunting regulations should the Preserve be abandoned, including the use of rifles, was cited as a safety concern and the basis for the lack of support.

In 1995, the Department and Commission proposed a Rule adjusting the boundary of the Teton-Spring Creek Bird Preserve. Again, the Department held a public hearing and public comment period. This time, there was little opposition to the Rule. The Notice of Public Hearing stated that the rationale was that a landowner had requested the boundary change because the boundary of the Preserve existing at the time made it difficult to conduct game damage hunts or hunt outside the Preserve boundaries. A notice to the public stated that the purpose of the boundary change was to better address game damage.

Section 87-5-402, MCA allows the Department, when properly petitioned, to alter and change the boundaries of the preserve.

At the December 12, 2002 Fish Wildlife and Parks Commission meeting, Choteau attorney R. L. Stoney Burk presented a Petition to withdraw the Pat Saylor Ranch and the Keith Van Setten Ranch from the Preserve. At a later date, Ottis and Sylvia Bryan also joined the petition to remove their Ranch from the Preserve boundaries. Additional properties owned by Teton County and by the State of Montana – DNRC are included as logical extensions of the petition.

A formal public hearing was held on August 21, 2003 in the Choteau Public Library, Choteau, MT. Purpose of this hearing was to initiate consideration of amending Administrative Rule 12.9.211 in consideration of the Petition submitted by the parties identified in section 4, above. Notice of the proposed hearing was issued in local and area print and radio media in advance of the hearing.

Because of wildlife-human conflicts, changes in land use in the area, associated hunter intolerance/safety concerns, and the fact that the Preserve presents significant wildlife management problems;

the Department recommends modification of the Teton-Spring Creek Bird Preserve. Should this change be implemented, the Department would recommend the implementation of a 'Special Weapons Restriction Area' hunting regulation. Hunting will then fall within established Commission seasons, thereby providing the framework within which private landowners can operate. Actual hunting access and the methods employed by hunters will be at the discretion of the private landowner.

The Preserve lies in portions of two separate hunting districts per the 2003 Montana Hunting Regulations: districts 404 and 450. As a separate action to the modification of the TSCBP boundary as presented above, the Department will offer to the FWP Commission a proposed hunting season regulation to accommodate public interest in safety as it relates to the use of firearms on these same ranches and simultaneously address problems manifested by the presence of too many deer. Lack of action in implementing special hunting regulations here would allow the existing hunting season regulations for hunting districts 404 and 450 to be implemented.

A Special Weapons Restriction Area would be proposed and implemented to address safety concerns as articulated by residents within and surrounding the existing TSCBP area. This restriction is routinely utilized by the Commission in mixed agricultural/residential areas throughout the state. In the 2003 Montana Hunting Regulations, 23 Special Weapons Restriction Areas are identified as all or portions of individual hunting districts. Such a 'Weapons Area' designation recognizes and mitigates safety issues presented by the close proximity of agricultural and residential uses of the land and the use of specific weapons on that landscape. Many other urban/rural interfaces within the state have no special weapons stipulations beyond those imposed by the relevant private landowners.

10. Listing of any other Local, State or Federal agency that has overlapping or additional jurisdiction.

Teton County Sheriff (Law Enforcement)

Teton County Commission (ordinances, zoning, land use planning)

11. List of Agencies Consulted During Preparation of the EA:

Teton County Commission

City of Choteau

State of Montana – DNRC

PART II. ENVIRONMENTAL REVIEW

1. This environmental review pertains only to new alternatives B, C, D, E, F& G. Alternative A, the No Action Alternative, would result in the status quo and no new impacts. Within the Physical and Human Environments checklists (Tables 1 & 2) the letters (B, C, D, E, F, G) correspond to the particular Alternative (listed below) to indicate that Alternative's potential impact.

Table 1. Potential Impact on Physical Environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Below Or On Attached Pages
1. Unique, endangered, fragile, or limited environmental resources				B,C,D,E, F,G		
2. Terrestrial or aquatic life and/or habitats		B,C,D,E,F,G				2.1
3. Introduction of new species into an area				B,C,D,E, F,G		
4. Vegetation cover, quantity & quality				B,C,D,E, F,G		
5. Water quality, quantity & distribution (surface or groundwater)				B,C,D,E, F,G		
6. Existing water right or reservation				B,C,D,E, F,G		
7. Geology & soil quality, stability & moisture				B,C,D,E, F,G		
8. Air quality or objectionable odors				B,C,D,E, F,G		
9. Historical & archaeological sites				B,C,D,E, F,G		
10. Demands on environmental resources of land, water, air & energy				B,C,D,E, F,G		
11. Aesthetics				B,C,D,E, F,G		

2.1 Alternatives B, C, D, E, F& G should improve the ability of private land owners to control (reduce) deer numbers and other nuisance wildlife, consequently improving vehicle safety, limiting game damage and improving agricultural production. Alternatives E, F & G will best permit the control of deer, while B, C & D will be limited by the remaining vestiges of the Preserve.

Table 2. Potential Impacts on Human Environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Below Or On Attached Pages
1. Social structures and cultural diversity				B,C,D,E, F,G		1.1
2. Changes in existing public benefits provided by wildlife populations and/or habitat		B,C,D,E,F,G				2.1
3. Local and state tax base and tax revenue				B,C,D,E, F,G		
4. Agricultural production		B,C,D,E,F,G				4.1
5. Human health				B,C,D,E, F,G		
6. Quantity & distribution of community & personal income				B,C,D,E, F,G		
7. Access to & quality of recreational activities			B,C,D,E,F, G			7.1
8. Locally adopted environmental plans & goals (ordinances)				B,C,D,E, F,G		
9. Distribution & density of population and housing				B,C,D,E, F,G		
10. Demands for government services			B,C,D,E,F, G			10.1, 10.2
11. Industrial and/or commercial activity				B,C,D,E, F,G		

1.1 Alternatives B, C, D, E, F & G will alter or eliminate the Preserve boundary. Some residents state that they live within the Preserve boundary because it is just that . . . a preserve. Such a change could alter the culture of living within a preserve and the lifestyle choices it defines.

2.1 Alternatives B, D, E, & G should improve the ability of private land owners to control deer numbers and other nuisance wildlife, consequently improving vehicle safety, limiting game damage and improving agricultural production. Alternatives E, F & G will best permit the control of deer, while B, C & D will be limited by the remaining vestiges of the Preserve.

4.1 Alternatives B, D, E, & G should improve the ability of private land owners to control deer numbers and other nuisance wildlife consequently improving vehicle safety, limiting game damage and improving agricultural production. Alternatives E, F & G will best permit the control of deer, while B, C & D will be

limited by the remaining vestiges of the Preserve.

7.1 Alternatives B, D, E, & G will provide the framework for improved hunter harvest and potentially, access. All hunting opportunities will remain at the discretion of local landowners. Retention of a smaller Preserve as allowed in B, C and D will similarly offer less opportunity for hunting harvest and access.

10.1 Alternatives B, C & D will still include restrictions of a Preserve (albeit smaller) and unless modified, will prohibit the carrying or discharging of firearms, complicating enforcement for state and local authorities.

10.2 Alternatives E, F & G will be more enforceable due to the total removal of the prohibition to carrying and discharging firearms.

2. Description and analysis of reasonable alternatives (including the no action alternative) to the proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternatives would be implemented:

A. **No Action:** Maintain the Preserve and all restrictions as is.

B. **Modifv Preserve Boundary:** Accommodate boundary changes as submitted by Petitioners Saylor and Van Setten Wilt and/or others. The hunting regulations framework within which private landowners would operate (outside of the Preserve) would default to existing, Commission established regulations for hunting districts 404 and 450. No weapons restrictions beyond normally established definitions for legal take would apply. Archery-only hunting would continue within the new Preserve boundary. Restrictions preventing carrying or discharge of firearms and prohibiting hazing of animals would be lifted on lands withdrawn from the Preserve, but would remain within the Preserve

C. **Modifv Preserve Boundary – Archery Only-out, Archery Only-in:** Accommodate boundary changes as submitted by Petitioners Saylor and Van Setten Wilt and/or others. Archery-only hunting would be the only regulations framework within which landowners formerly within the Preserve boundary could operate. Restrictions preventing carrying or discharge of firearms and prohibiting hazing of animals would be lifted on lands withdrawn from the Preserve. Existing restrictions would continue to apply within the Preserve.

D. **Modifv Preserve Boundary – Special Weapons Restriction Area-out, Archery Only-in:** Accommodate boundary changes as submitted by Petitioners Saylor and Van Setten Wilt and/or others. The hunting regulations framework within which private landowners would operate (now, outside of the Preserve but within the old Preserve boundary) would become that of a Special Weapons Restriction Area as defined by the FWP Commission. Specifically, that includes the use of weapons including archery, crossbow, shotgun, muzzle-loader, or traditional handgun. Commission established regulations for hunting districts 404 and 450, respectively, would apply. Archery-only hunting would continue within the new Preserve boundary. Restrictions preventing carrying or discharge of firearms and prohibiting hazing of animals would be lifted on lands withdrawn from the Preserve, but remain within the Preserve.

E. **Abandon the Preserve Status:** Eliminate the Preserve in its entirety. The hunting regulations framework within which private landowners would operate would default to existing, Commission established regulations for hunting districts 404 and 450. No weapons restrictions beyond normally established definitions for legal take would apply. Restrictions on carrying firearms and prohibitions on hazing of animals would be lifted.

- F. **Abandonment of the Preserve Status – Archery Only:** Eliminate the Preserve in its entirety. Establish an Archery Only season within the boundaries of the 'old' Preserve. Restrictions on the carrying or discharge of firearms and hazing of animals would be lifted.
- G. **Abandonment of the Preserve Status – Special Weapons Restriction Area:** Eliminate the Preserve in its entirety. Establish a Special Weapons Restriction Area season, as defined by the FWP Commission, within the boundaries of the 'old' Preserve. Specifically, that includes the use of weapons including archery, crossbow, shotgun, muzzle-loader, or traditional handgun. Commission established regulations for hunting districts 404 and 450, respectively, would apply. Restrictions on carrying firearms and prohibitions on hazing of animals would be lifted.

Benefits of Boundary Adjustment of the Preserve status: Alternatives B, C, & D:

- (1) Boundary Adjustment will allow petitioning landowners (only) control over their property for the purposes of managing deer numbers, hunter access and use of firearms. Under Preserve status, individual landowners do not have the authority to hunt, trap, discharge firearms, or to allow these activities to occur on their properties.
- (2) Boundary Adjustment should improve the Department's ability to address deer damage complaints and manage deer populations within private landowner tolerances.
- (3) Boundary Adjustment will decrease the response time in dealing with furbearer damage complaints.
- (4) Boundary Adjustment will allow petitioning landowners (only) to control nuisance animals through use of hazing, trapping, firearms and/or archery.
- (5) Boundary Adjustment will allow petitioning landowners and their guests (only) to legally carry and discharge firearms on their own property.

Benefits of Preserve Abandonment: Alternatives E, F, & G:

- (1) Abandonment will allow all Preserve landowners, including petitioning landowners, control over their property for the purposes of managing deer numbers, granting hunter access and use of firearms. Under Preserve status, individual landowners do not have the authority to hunt, trap, discharge firearms, or to allow these activities to occur on their properties.
- (2) Preserve Abandonment will greatly improve the Department's ability to address deer damage complaints and manage deer populations within private landowner tolerances.
- (3) Preserve Abandonment will decrease the response time in dealing with furbearer damage complaints. Individual landowners will have the authority to trap and hunt on their own properties.
- (4) Boundary Adjustment will allow all landowners to control nuisance animals through use of hazing, trapping, firearms and/or archery.
- (5) Boundary Adjustment will allow all landowners and their guests to legally carry and discharge firearms on their own property.

- (6) Boundary Adjustment may increase hunter opportunity and access. Access remains at the discretion of the private landowner.

3. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:

As a corollary to the action assessed in the EA, the Department must consider the impacts of withdrawing petitioning landowners from the Preserve. Specifically, the course of hunting season regulations and attendant weapons considerations is addressed on behalf of safety issues raised by the public. Options listed include implementing a season type, based upon Montana Hunting Regulations established by the FWP Commission, as either Archery Only, Special Weapons Restrictions or defaulting to existing Montana Hunting Regulations and their attendant definitions of weapons restrictions. Any hunting will fall within established Commission seasons and authority, thereby providing the framework within which private landowners can operate. Actual hunting access and the methods employed by hunters remains at the discretion of the private landowner.

4. Based on the significance criteria evaluated in this EA, is an EIS required? YES / NO. If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:

Based on an evaluation of impacts to the physical and human environment under MEPA, this environmental review found no significant negative impacts from the proposed action involving the Teton-Spring Creek Bird Preserve. Thus an EIS is not necessary and an environmental assessment is the appropriate level of analysis.

5. Describe the level of public involvement for this project, if any and, given the complexity and the seriousness of the environmental issues associated with the proposed action, is the level of public involvement appropriate under the circumstances?

Adequate and thorough public involvement has been obtained to address the proposal under consideration and the attendant issues.

An informal scoping process meeting of landowners and interested individuals in the Preserve area was held on January 31, 2002. That meeting was well advertised in local media outlets and received coverage in the Outdoors columns of the Great Falls Tribune. An estimated 50 persons attended the meeting to: "discuss the present and future wildlife management options on the Teton-Spring Creek Bird Preserve".

Letters were sent and phone calls made to interested residents of the area to keep them abreast of the status of evaluation of the issues involved with the Preserve and also notifying them of meetings, etc.

A formal public hearing was held on August 21, 2003 in the Choteau Public Library, Choteau, MT. Notice of the proposed action was printed in the Great Falls Tribune (August 13 & 20, 2003) and Choteau Acantha (August 13 & 20, 2003). A general regional news release was distributed to north-central Montana media (August 4, 2003).

6. Duration of comment period if any:

This environmental assessment will be open for public comment from Friday, September 26 to October 27, 2003 (32 days).

7. Name, title, address and phone number of the Person(s) Responsible for Preparing the EA:

Mike Aderhold, Regional Supervisor, Montana Fish, Wildlife & Parks, 4600 Giant Springs Road, Great Falls, MT, 59405.

Graham Taylor, Regional Wildlife Manager, Montana Fish, Wildlife & Parks, 4600 Giant Springs Road, Great Falls, MT, 59405.

Tom Flowers, State Game Warden, Montana Fish, Wildlife & Parks, P.O. Box 598, Choteau, MT 59422.

Quentin Kujala, Area Wildlife Biologist, Montana Fish Wildlife & Parks, P.O. Box 488, Fairfield, MT 59436

Martha Williams, FWP Attorney, Montana Fish Wildlife and Parks, P.O. Box 200701, Helena, MT 59620